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Some reflections on the nature and implications of handicap



By Albin T. Jousse

Our human (if not necessarily our natural) environment has improved greatly since the Second World War because of the sensitivity, understanding and goodwill of the generation that has come to maturity. Our society now possesses the skills and the will to open wider vistas to the handicapped than have been possible at any previous time in the history of mankind.

It is thus a most appropriate time during which to introduce legislation forbidding discrimination on the basis of disability. It is quite likely that once such legislation is in place, there will be a considerable number of complaints registered by individuals who, although handicapped, believe that their failure to obtain jobs, housing and access to goods and services is a product of discrimination rather than of their lack of ability. It will be necessary that an evaluation be made of the handicapped

person's competence and of the workplace or accommodation, and on the basis of this, determine where the responsibility for lack of achievement rests and how best to resolve the impasse.

The rehabilitation of the handicapped involves a different process and requires a careful examination of the extent of impairment that remains after treatment and education, including physical education, attitudinal education and vocational education. As well, the workplace or housing accommodation must be evaluated to determine if appropriate modification can advance the goal of emancipation.

To carry out both tasks, it is essential to gain an appreciation of the manner in which impairment affects performance, in comparison with the normal state. The unimpaired are able to walk, run or climb with ease. With equal ease, they

can manipulate tools, instruments or equipment and thus practise acquired skills. They see, hear, taste, smell and touch. They think, plan, talk and execute. Thus, there are many options open to them for the choice of vocational or avocational activity.

By contrast, physical or intellectual impairment or emotional or psychological problems may significantly limit the options that remain open for achievement, but only in rare instances are all avenues for advancement barred.

The simplest deficit causing obvious limitation is that of impaired ability to walk. Such impairment may be a consequence of amputation, paralysis of the legs, joint disease or impaired equilibrium. Less obviously, limitation may be imposed through heart or lung disease or marked obesity, which may limit range of movement. Blindness, of course, makes walking hazardous and time consuming.

It may well be that in a job it is a *bona fide* occupational qualification to walk, run, climb or carry. Technology may compensate to a considerable extent, but, certainly, the options open to those with impaired walking capability are diminished.

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At this printing, Bill 7, the proposed new Ontario Human Rights Code is still in committee.

Board rules on wearing of kirpan

Pritam Singh is a member of the Sikh faith and at the age of 16 chose to be baptized. He thereby assumed the responsibilities of his faith and committed himself to fulfilling the five 'Ks', which require that Sikhs must never cut the hair of their bodies, that a small wooden comb keep the hair intact and clean and be carried at all times, that a steel bracelet be worn on the wrist, that a specially designed pair of undershorts be worn and that the ceremonial dagger, the kirpan, be kept on their persons at



all times. There are other commitments that deal with smoking, drinking, drugs, dietary laws and moral values.

A booklet describing the meaning of the five Ks, states the following:

'Disciples are asked to wear long hair (keshas); a comb (khangra) stands for cleanliness of hair; a steel bangle (kara) as a symbol for honest and right use of our hands; underwear (kachh) as a symbol of continence; and the sword (kirpan) as an armour of protection. The comb is a general symbol for cleanliness of mind and body, the steel bangle a general symbol for purity of action, the underwear a general symbol for purity of character, and the sword is a general symbol for the primal power.'

Sikhs who submit to baptism and who assume the obligations of the five Ks and the other disciplines are called Khalsa or 'Saint Soldiers'. Historically, the kirpan was not an offensive, but a defensive, weapon; nowadays, it symbolizes the obligation to protect the weak and is a source of self-confidence and prestige, according to Dr. John W. Spelman, Professor of Asian Studies at the University of Windsor.

Mr. Singh laid a complaint with the Human Rights Commission because, when he went for treatment to the Workmen's Compensation Board Rehabilitation Centre in Downsview, he was not permitted to wear his kirpan. He was wearing it in a sheath (gatra)

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Maternity leave legislation in Ontario

The strike of the inside postal workers last summer featured the demand for 17 weeks of paid pregnancy leave. Because the issue touches tangentially upon human rights (see editorial elsewhere in this issue), a brief look at the relevant Ontario legislation may be instructive:

In Ontario, maternity leave is covered by the *Employment Standards Act*, whose provisions are enforced by the Employment Standards Branch of the Ministry of Labour.

The Act provides for a flexible 17-week unpaid leave of absence for all employees with a minimum of one year and 11 weeks of service with an employer prior to the expected date of delivery. Maternity leave may be taken at any time within a 17-week period between 11 weeks before delivery and six weeks afterwards. (The federal *Unemployment Insurance Act* has similar provisions).

A woman cannot be dismissed due to pregnancy if she qualifies for maternity leave, nor can she be compelled to start her leave early, unless the employer can show that she is not able to perform because of her state of pregnancy. No distinctions are made between illnesses resulting from pregnancy and other types of sickness.

Upon return to work, the woman is entitled to the same or comparable work at the same salary and she suffers no loss of benefits or seniority accrued prior to leave.

The postal workers requested that the period of 17 weeks' maternity leave be fully compensated by the employer. The final agreement, however, provided that the employer would subsidize the mother, but not pay her full wages. (Civil servants in Ontario get only the benefits provided under the *Employment Standards Act*).

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Suing for discrimination

By W. Gunther Plaut

While the country was waiting with bated breath for the decision of the Supreme Court of Canada on the constitutional issue, the court decided another case of wide importance just before it adjourned. However, the decision went largely unnoticed because it was overshadowed by constitutional matters, which then held the spotlight of public attention.

Judgement was pronounced on June 22 in the case of the Board of Governors of Seneca College of Applied Arts and Technology versus Dr. Pushpa Bhaduria. The reasons for judgement, written by Chief Justice, the Honourable Bora Laskin, were supported by six associate justices.

Dr. Bhaduria is a highly educated woman of East Indian origin with an earned Ph.D. degree in mathematics. She holds a valid Ontario Teaching Certificate and has had seven years of

teaching experience in her field. In response to newspaper advertisements placed by Seneca College, she made ten separate applications for a teaching position and although the college advised her that she would be contacted for an interview, she was never given such an opportunity nor was she informed of any reason why others with lesser academic qualifications than hers were successful. She reasoned that there was discrimination against her because of her origin and that the college was therefore in breach of a duty not to discriminate against her as prohibited by section 4 of the *Ontario Human Rights Code*. In suing the college, she alleged that she had suffered mental distress, frustration, loss of self-esteem and dignity, as well as lost time by repeatedly applying for advertised positions for which she was denied the opportunity to compete.

Some reflections on the nature and implications of handicap
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The same causal factors may prevent free practice of skills with the upper extremities, which include writing or typing. A further handicap may include inability to perform the routine activities of daily living. Sometimes, impairment of the upper extremities is superimposed on impairment of the lower extremities, which compounds the handicap.

The full use of the hands may be a *bona fide* requirement for many vocational and avocational pursuits. The options are thus further reduced by such a multiple deficit.

Communication (speech, hearing, sight) is a third essential for human endeavour. Motor or sensory impairment resulting from brain damage may diminish or abolish speech, sight and hearing. Impaired intellect, psychosis or emotional disequilibrium may impair formulation and execution of structured activities and create a serious barrier between an individual and his or her associates and thus constitute the greatest hurdle to achievement. Nonetheless, careful search and study may reveal one or more options, towards which vocational and avocational endeavour may be directed.

Severe pain, from any cause whatsoever, may restrict or abolish endeavour and prevent achievement.

It will be evident that where locomotion, manipulation and communication are limited, the options are often very few indeed and, unfortunately, many persons do suffer such multiple impairment. There are thus deficits that cannot be repaired or circumvented.

Careful research and evaluation is necessary to determine the basic aptitudes remaining which, if developed, permit purposeful endeavour. Thus, every option must be explored. Once identified, the talents must be refined and rendered functional to whatever extent is possible. ■

Dr. Jousse, OC, is a member of the Ontario Human Rights Commission and one of Canada's foremost authorities on rehabilitative medicine. He himself is handicapped by an impairment in walking.

Board rules on wearing of kirpan *continued from page 1*

underneath a sweater, but left it in the locker room prior to entering the pool. After completing his swimming exercises, he dressed and put on the kirpan again. Fellow patients subsequently complained that Mr. Singh was wearing a weapon, and after much discussion, the patient was asked not to attend the rehabilitation centre while wearing his kirpan. Mr. Singh informed the administration that he was required to wear the kirpan at all times. The hospital suggested that he wear a smaller kirpan, but Mr. Singh refused this as being injurious to his faith, and complained that the hospital's procedure offended against section 21(a)(b) of the *Ontario Human Rights Code*.

A settlement could not be reached in conciliation and the commission eventually asked the minister to appoint a board of inquiry. Professor Frederick H. Zemans, of Osgoode Hall Law School, was asked to chair the board. His decision was handed down in mid-summer 1981.

The 29-page document discusses, in detail, the Sikh faith and the responsibilities that a believing, baptized member of the religion must assume. In the final analysis, Prof. Zemans said the issue was not whether the hospital had a duty towards its other patients to protect them from actual or potentially traumatic situations or whether Mr. Singh had a basic right to wear his

Human rights entail obligations – a Buddhist view



By Suwanda H.J. Sugunasiri

Human rights denote social relationships. Inherent in the actualization of such relationships is the notion of reciprocity, as expressed by the Buddha in his discourse on the homily to householder Sigala. In this discourse, or *Sutta*, he teaches how parents and children, teacher and pupil, husband and wife, friend and friend, employer and employee, and the clergy and laity should foster a reciprocal relationship.

When we extend the notion of social relationships to the domain of human rights, we note that the obverse of rights is obligations. In order to make the concept of human rights more balanced, comprehensive and humane, it is

imperative that we enshrine human obligations as part and parcel of human rights.

Concern with human rights and obligations should, however, not be limited to race, colour, sex, etc. It must be extended to include social issues such as air pollution, abortion, war, housing, day care, car safety, drug use, smoking, drinking, etc., since they all have a dimension of obligation.

The Buddha's last words challenged everyone to 'be a lamp/island to oneself.' Extending the metaphor, then, let us each be our own guarantor of human rights and obligations. While we should fight for our own rights, we should fight, with equal commitment, for the rights of others. Further, each act of asserting our rights must be matched by an act of meeting our obligations. As we give, so others get; we also get as others give. ■

Dr. Sugunasiri, co-ordinator of Toronto's Buddhist Federation, is an expert in South Asian cultures and works for the Toronto Board of Education.

How it works – human rights procedures

By Howard Jones

Almost every Thursday morning, members of the Case Review panel, consisting of three commissioners, assemble to deal with proposed settlements and exemptions. They are assisted by the commission's legal counsel and a senior staff person.

By the time a case reaches the panel, an important process has already transpired. A person who has reasonable grounds for believing that discrimination has taken place in employment, housing, public accommodation, services or facilities on the grounds of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin may file a complaint in writing at one of 13 commission offices throughout Ontario.

A human rights officer then investigates the complaint by conducting a thorough and impartial investigation. The officer obtains both sides of the story, interviews witnesses and third parties and analyses records and documents. At the conclusion of the investigation, the officer then acts as a conciliator in attempting to arrive at a fair resolution that is acceptable to all parties. A conciliated settlement could include a job offer or reinstatement, compensation for lost wages, compensation for injury to dignity, letters of apology and assurances of future compliance with the Code. It may also involve an acceptance by the complainant that there is no evidence to substantiate the allegation of discrimination or it may clarify any misunderstanding that developed between the parties. The settlement should provide a remedy where discrimination has taken place as well as prevent future recurrences of discrimination. Over half the cases are resolved at this stage.

If a settlement cannot be achieved, the case goes to the monthly commission meeting at which all 10 commissioners review the case (under the proposed Code, a panel of three commissioners will suffice). The commissioners then recommend to the Minister of Labour whether or not the case should go to a board of inquiry. The decision of the board may be appealed to the courts by either party. ■

Howard Jones is the executive officer of the Ontario Human Rights Commission.

A citizen does her duty

Ms. B. attempted to apply for summer employment in an agricultural job. She came in the company of five male classmates, all of whom were given application forms, while she was told to write a letter asking that she be considered for employment. Only after requesting an interview with the personnel manager was she allowed to fill out an application form. She noted that there were no females working in the plant, and concluded that the difficulties laid in her path were due to her sex. She filed a complaint under section 4(1) of the *Ontario Human Rights Code*.

In her complaint, she claimed that no females were employed in production jobs at the plant either as summer or permanent staff, that no jobs appeared to be too difficult for females, that there were no washroom or change-room facilities for females, that the five men

who had applied along with her would verify that she had been denied an application form, that males of lesser ability were in fact hired and that the company had a policy giving hiring preference to children of employees.

When filing her complaint, Ms. B. made it clear that she was now seeking neither a job nor any form of monetary compensation, but that she felt it to be her duty to help correct a situation which bred discrimination.

Subsequently, the complaint was settled and the respondent agreed to embark on a hiring program for females in the production department and begin the actual hiring in September 1981. The commission will be notified in January and June 1982 of the results of the company's new hiring practices. ■

Editorials

Hair – as a cultural and religious symbol

The insistence by orthodox Sikhs and Jews to let their hair grow is a matter of considerable puzzlement to many. Both groups follow the demands of their tradition to guard the hair of the head. In traditional Judaism, scissors may be used to trim the hair, but not razors; and Chasidic Jews are distinguished by letting their ear locks grow. The Bible devotes a special section to persons who, for a certain time, vow not to touch alcohol or cut their hair. The famed Samson had been dedicated by his mother, even before his birth, to lead a life of special observance. Retaining his hair was a sign of continued recognition of his religious obligations.

Throughout history, the hair of the head has been considered important. Men and women have usually treated it as the crown of the visible self and the most adaptable part of their appearance. They have beautified it, shaped or coloured it and have, on occasion, removed or hidden it. Cutting a man's beard against his will (as was done by the Nazis to Jews), or a woman's hair as punishment (as was done in France and Northern Ireland by partisans to those accused of collaboration with the enemy), represented the ultimate in public humiliation. Where hair was, or is, cut or shaved voluntarily (as by Buddhist, Roman Catholic and ancient Egyptian priests), the act symbolizes consecration. Conversely, medieval kings did not cut their hair; in fact, the royal crown was probably originally a headband.

Frequently, a hirsute appearance symbolized personal integrity. In cultures favouring short hair, the growing of long hair may indicate a rebellious spirit or a different value system. Not long ago, the expression 'long hair' referred to a traditional or



esoteric taste in the arts. Or, short hair may indicate membership in certain groups favouring non-conforming political ideas, (as, for instance, among the English 'skinheads').

By their appearance, the religious observants aim to testify to membership in a community dedicated to special ideals. In the light of these ancient identifications of hair with separateness and holiness, one can better understand the profound unease with which, in our century, young people's preoccupation with short or (later) long hair was greeted by the elders, for more than mere appearance was at stake. Similarly, the insistence of many employers that employees conform to certain hairstyles may reflect motives other than a desire for standardization or neatness.

The Human Rights Commission has always taken this issue seriously, and has attempted to safeguard a person's religious integrity as a matter of right. ■

The trauma of sexual harassment

A woman filed a complaint that her employer had sexually harassed her. She came to the commission's office accompanied by her husband, and signed the customary and required complaint form. That, in effect, was the last contact our officer had with her because from then on it was her husband who spoke for her and who, in the end, identified himself so completely with what happened to his wife that he talked of the incidents as if they had happened to him, personally.

One might expect such a transfer of responsibility to be an aspect of certain

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European, Asian or African cultures, where the nearest of kin to the offended woman—her father, husband or brother—seeks restitution for her honour, and the matter thereby becomes a family affair. However, in this particular case, the complainant and her husband were Canadian born and belonged to what is often referred to as the 'majority culture'.

What this highlights, then, is the pervasive sensitivity that incidents of sexual harassment elicit in all their degrees of severity. Women hesitate to speak of them and often are reluctant to pursue the case altogether. For this reason, they might leave it to a husband or brother to pursue it if he (and not necessarily she) so wishes it. Therefore, when a settlement is reached, it is not necessarily the woman who will be ready to sign it, but rather her representative. The matter has become too painful and she seeks to escape further involvement.

What it all comes down to is this: the law may be clear (and in the new Code it will be specific on the issue of sexual harassment), but there are still many people who have to deal with their innermost feelings, anxieties and traumas. Human rights are more than clauses written on paper, they touch persons at their core and nowhere more so than in sexual offences of any kind. ■

Is maternity leave a human right?

The recent long strike by the inside postal workers brought into focus one of the contentious issues: maternity leave. In Ontario, the issue is dealt with under the *Employment Standards Act* and not by the *Ontario Human Rights Code*. (See more on this subject elsewhere in this issue).

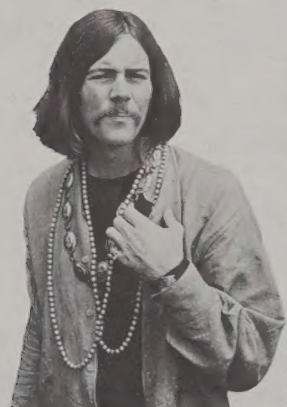
Still, there are certain implications that touch on the question of women's right to freedom from discrimination. Lynne Gordon, chairman of the Ontario Council on the Status of Women, touched upon this principle



recently when she said, 'The definition of equality does not translate into treating all people the same at all times. The true test of social justice rests on whether certain groups of people are experiencing adverse effects because they belong to this social category... Although maternity is often thought of as a private problem, it is also a public issue. As a society, we need to reproduce to perpetuate ourselves. In the past, women have been performing this essential public service without compensation. The penalty for maternity has become intolerable and women are no longer willing to pay the price.'

In this connection, it is well to remember that not long ago, women were fired for being pregnant because their condition was thought to present a social stigma. Ms. Gordon comes to the heart of the issue when she says, 'Women are asking for equitable treatment for a function that only they can perform. They aren't asking to be rewarded for motherhood, but they don't want to be penalized for it, either.'

The Human Rights Code does not cover all aspects of daily life, but the spirit upon which it rests needs to be applied everywhere and at all times. ■



Being white as a problem

A white man saw an ad in a Toronto newspaper for a position in a garage. He was told by the supervisor that since all the other men in the department were black, his employment would likely not work out. The man asked to be given a chance, but the manager refused. Subsequently, a complaint was laid with the Human Rights Commission.

The respondent claimed that in his experience, about six white men had come and gone from the garage and all of them had stated that the black employees had picked on them. He therefore claimed that he had not hired the complainant for his own benefit. When interviewed by a human rights

officer, the employees themselves stated that colour was *not* an issue, but that previously engaged white workers had quit because the work was hard and dirty.

Settlement was effected by the respondent paying the complainant two weeks' salary representing lost earnings and agreeing to the establishment of an equal employment opportunity policy in his business. ■

Damages awarded on sexual harassment case

Professor E. J. Ratushny, sitting as a board of inquiry, recently decided a complaint brought by two women who complained that they had been sexually harassed on the job. The board accepted the testimony of the complainants as credible and assessed the defense of the respondent as lacking in credibility. One complainant was a 17-year-old girl at the time of the incident and the respondent was old enough to be her father. She received \$2,085.00 by way of compensation for lost earnings and insult to her dignity, and the other complainant, who had suffered more aggressive harassment, was awarded \$4,400.00. ■

A significant settlement

A black Jamaican woman, Ms. N. had served for nine years in an insurance company. Several years ago she had filed a complaint with the Human Rights Commission against the company, but, at the time, nothing came of the complaint. Now she filed again, indicating that in the re-organization of the company, she was the only employee to be made redundant. She concluded that her dismissal was based on reprisal, as well as race, colour, ancestry and place of origin.

During the process of conciliation, the company offered to rehire Ms. N., but she was no longer willing to work for them. The respondent then agreed to pay her a sum of over \$11,000.00 in compensation and the settlement was accepted by the complainant. ■

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Judge Frank Callaghan, before whose court the matter first came, disallowed the suit because, he said, the plaintiff's remedy lay elsewhere; namely, in a complaint to the Human Rights Commission. Dr. Bhaduria appealed Judge Callaghan's decision and won her appeal, only to lose in the end in the Supreme Court of Canada.

This fascinating case was argued not on the basis of facts (which were conceded to be provable, though not necessarily proven), but of law: Did Dr. Bhaduria have grounds to sue Seneca College because, in common law, the public policy expressed in the Code gives rise to such a tort? Could she go the route of civil action in the courts, in addition to, or instead of, the route of remedies provided by the *Ontario Human Rights Code*?

In the Court of Appeal, Madam Justice Wilson ruled that such a tort could be recognized, though there was no precedent in Canada for doing so. In fact, then, her judgement created a new intentional tort.

The basis of her judgement was the spirit of the *Ontario Human Rights Code*, as expressed through its preamble:

'...it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin.*

The Code then sets forth, in detail, the grounds of discrimination that may give rise to a complaint. Where a complaint has been laid and the commission cannot effect a settlement, the commissioners must decide whether or not to request

*The new Human Rights Code, known as Bill 7, and now before Committee, expands this paragraph somewhat, without altering its basic thrust.

The silent majority — a forgotten people?

By Catherine Wilbraham

'Human rights? Don't make me laugh! The only people who have human rights around here are the minority groups and the misfits. What rights does any law-abiding white middle-class Canadian have? The rights to put up and shut up, that's all. I can't even discipline my own kids any more. Do you know what my 15-year-old son said to me when I asked him to cut the grass? He said, "Cut it yourself; you can't make me do it; you haven't got the right." I tell you, the world's going to the dogs!'

The unhappy father who voiced this bitter sentiment is not alone in his belief that he belongs to a class of people who have been forgotten: the so-called silent majority, who also feels itself to be the invisible majority.

For many of us average, white middle-class Canadians, the term 'human rights' has a frightening connotation. There are those among us, like the man quoted at the beginning of this article, who believe that human rights legislation has opened the door to anarchy, heralded the disintegration of the ordered world and precipitated us all down the road to hell in a hand basket.

They believe that any member of a minority group has been given, among other things, *carte blanche* to extort from society not only jobs for which they are not qualified and living accommodation for which they cannot pay and, furthermore, which they abuse, but special exemptions from the laws of the land on the mere basis of belonging to a minority group.

To say that these beliefs are fallacious is to state no more than the truth. Of course, no one is forced to employ an

the Minister of Labour to appoint a board of inquiry. Where a board is appointed, the case enters the regular process of court procedures. Appeals by both parties to the Divisional Court, the Ontario Court of Appeal and the Supreme Court of Canada are possible. The Code provides that an appeal may be made on questions of law or fact or both. The court may affirm or reverse the decision or direct the board to make any decisional order that the board is authorized to make under the Act, or the court may substitute its own opinion for that of the board (Bill 7 has the identical provisions).

The Code thus gives the plaintiff a wide opportunity for action and gives both plaintiff and respondent the largest measure of judicial review of any decisions that a board of inquiry might render. But, in addition to these remedies, is there also a *civil cause of action in common law* arising from the policies reflected in the statute and standards fixed by the Code? Madam Justice Wilson thinks there is.

She could rely for strong support on a previous judgement by the Ontario Court of Appeal rendered by Mr. Justice Keiller MacKay (later Lieutenant Governor of the Province). In a famed decision in 1945, he struck down a restrictive covenant in a deed of land which prohibited the sale of land to 'Jews or persons of objectionable nationality' as offensive to public policy, which he found expressed in the *Ontario Racial Discrimination Act of 1944*. Madam Justice Wilson emphasized that Judge MacKay had invalidated the covenant, not because it violated the Act but because it was contrary to the public policy expressed in the Act. Similarly, she held that the provisions of the Human Rights Code give rise to a cause of action at common law. 'While no authority cited to us has recognized a tort of discrimination, none has repudiated such a tort.'

incompetent or unqualified person nor to accommodate a disreputable one as a tenant, no matter what colour, race, religion, sex, shape or size that person is. The *Ontario Human Rights Code* is designed to curb socially destructive prejudice, not to safeguard undesirables.

It is, unfortunately, true that certain people will try to use the Human Rights Code as a lever or a threat in order to gain an advantage. And if they are successful in intimidating us, it is not the Code we must blame, but our own ignorance of the law. It is our ignorance that unscrupulous people prey upon.

Ignorance of the law, like all ignorance, gives rise to a multitude of evils, not the least of which is fear. And fear is an exploitable emotion. Ignorance and fear provide fertile ground for the seeds of dissatisfaction and discord sown so eagerly by hate-mongers such as the Ku Klux Klan and others of their philosophy.

We must learn what our rights are. We must learn the law. We must learn that the *Ontario Human Rights Code*, in ensuring that our neighbours are given protection by the law from discrimination, has not disenfranchised us; that in recognizing and securing the rights of this group or that, it has not rescinded our own.

Whether we realize it or not, each of us belongs to one minority group or another. The *Ontario Human Rights Code* applies to everyone. Its success, and the future of our society, depend upon us all. ■

Catherine Wilbraham is publications editor for the Ontario Ministry of Labour

The Supreme Court disagreed. While the view taken by the Ontario Court of Appeal, it said, was a bold one and was to be commended as an attempt to advance the common law, the Human Rights Code provided all necessary remedies. Said the Chief Justice: 'The Code excludes any common law action based on an invocation of the public policy expressed in the Code.'

Accordingly, the court set aside the judgement of Justice Wilson. In doing so, it gave, however, added emphasis to the Human Rights Code. This emphasis underscores the importance of Bill 7 which, when enacted, will be the repository of vital rights, and which, in many respects, will be a pace setter for the nation. ■

Dr. Plaut, OC, is vice chairman of the Ontario Human Rights Commission and Editor of Affirmation.

Female brokers



Women are making inroads into the stockbrokerage field. Here, a successful female stockbroker looks over the day's prices.

Ms. F., a technical assistant in a brokerage house, alleged that she was bypassed twice for a position as a full broker, while men were brought in whom she had to train into the very job she had been doing. When she questioned these decisions, she was told she lacked potential, but at no time was this explained or substantiated. The manager, she said, had referred to himself on numerous occasions as a male chauvinist.

A review and comparison of personnel records revealed discriminatory patterns in employment. Three women assistants had been kept in their positions for several years. They had, in fact, operated as brokers without being given the title or financial rewards that would go with the position.

The brokerage house agreed to transfer the complainant to a position as trainee broker, pay her wages as a junior broker retroactive for two years (which amounted to over \$5,000.00), and to institute personnel policies that would ensure equal opportunity for all employees. ■

Do you know your rights?

Everybody has rights, but do you know what they are? If you have a human rights problem or a question you want answered, call the Ontario Human Rights Hotline. We are here to help you with any information you may need. Call collect from anywhere in the province, anytime, day or night. (416) 965-2216.

A significant anniversary



In December, the world celebrates the 33rd anniversary of the Universal Declaration of Human Rights. Reference to this Declaration is made in the preamble to the *Ontario Human Rights Code* (which preamble is identical to that proposed in Bill 7):

'Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is a foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations....'

When we, in Ontario, enhance the cause of human rights, we enlarge its sway in the world; and whenever human rights are infringed elsewhere, they are infringed here as well. The bell of human rights tolls everywhere.

A creative settlement — without a complainant

The headline seems to be a contradiction in terms, yet this is what happened in a community in Ontario's golden horseshoe.

Ms. C. worked as a cashier in Mr. M's general store. She complained that from the very beginning of her employment, the owner harassed her sexually, even though she made it clear that his verbal and physical advances were most unwelcome. Eventually, she decided to leave the job and laid a complaint with the commission.

The investigation conducted by the human rights officer supported Ms. C's allegations. It turned out that several other former female employees had left Mr. M's employment due to the owner's sexual advances. It appeared that Ms. C. had a strong and verifiable cause for her complaint.

Although Ms. C. subsequently disappeared and could not be located, the officer was able to effect an agreement with Mr. M., in which the owner wrote a letter of assurance to the Ontario Human Rights Commission and a letter of regret to the complainant (which is being kept on the commission files in the event Ms. C. makes future contact), posted a declaration of management policy card and, for the next two years, forwarded to the local commission office the names of all new employees.

Further, Mr. M. added to his employment application forms the following clause: 'For your information: the *Ontario Human Rights Code* prohibits discrimination in employment because of sex, and sexual harassment. Sexual harassment is defined as repeated and unwanted looks, comments or suggestions of a sexual nature by a person in authority or a co-worker. If you feel you are experiencing such comments, looks or suggestions, you are instructed to inform Mr. M. If you are dissatisfied with actions to correct the situation, you can contact the Human Rights Office.'

Finally, an anonymous generous donation was given to the local rape crisis centre by the respondent.

A creative settlement indeed! ■